



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/166920

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 26, 2015, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance (MA), a telephonic hearing was held on July 16, 2015.

The issue for determination is whether the OIG correctly modified the personal care worker (PCW) hours for petitioner pursuant to her prior authorization (PA) request.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: written submittal of Sharon Beck, RN, BSN  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She is 49 and her diagnoses include coronary artery anomaly and shortness of breath.

2. On April 28, 2015 the petitioner's PCW provider, [REDACTED], submitted a PA for petitioner to receive PCW services in the amount of 24.5 hours per week, 7 hours weekly for travel time, 9 skilled nursing visits, and 18 hours per year of PRN time, to start 4/1/15.
3. On May 18, 2015 the OIG issued a notice to the petitioner that the requested PCW service hours were modified because not all of the PCW services requested were shown to be medically necessary. The agency allowed PCW services in the amount of 17 hours per week, 7 hours weekly for travel time, 3 skilled nursing visits, and 18 hours per year of PRN time to start 4/14/15 due to backdating rules.

### **DISCUSSION**

MA coverage of PCW services is described in the Wis. Adm. Code, §DHS 107.112. Covered services are specified in subsection (1), and are defined generally as "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community." Examples of covered services are assistance with bathing, with getting in and out of bed, with mobility and ambulating, with dressing and undressing, and meal preparation. In determining the number of PCW hours to authorize the OIG uses that standard along with the general medical necessity standard found at Wis. Adm. Code, §DHS 101.03(96m). It provides:

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
  1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
  2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
  3. Is appropriate with regard to generally accepted standards of medical practice;
  4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
  5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
  6. Is not duplicative with respect to other services being provided to the recipient;
  7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
  8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
  9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, §DHS 101.03(96m).

The OIG modified the PA in this case for a couple of reasons. First, it determined that the documentation submitted with it did not support the medical necessity of all of the hours requested because it did not show that she required time for using a back brace, for mobility, and for range of motion. The agency did award time for all of the other services requested. While there seems no dispute that petitioner has back pain, the PA does not show when or why the brace was ordered for her, for what purpose and for what frequency she needs to wear it. Her testimony was that she used to wear it about every other day as an attempt to avoid her back pain, but that since July 9 or so, she has not worn it because she was recently discharged from the hospital after having open heart surgery. None of her past clinical notes, submitted

with the PA, provide this information. As to mobility, petitioner described needing assistance with the stairs to get in and out of her home due to her hip pain. Other than to attend medical appointments, the information shows that petitioner does not regular attend activities outside of the home. The agency awarded 18 hours per year of PRN time, which is time allowed for when petitioner goes to her Medicaid covered medical appointments or for short duration episodes of acute need, thus the PRN time covers that need for getting in and out of her home. She testified that while she does have difficulty with mobility in the home, that it is related to her shortness of breath, but she allows herself to recover by taking a rest break. The petitioner was unable to address the range of motion (ROM) issue other than to state that her PCW/daughter does it. There is no information to show that the ROM could not be completed during routine activities of daily living. In reviewing the information submitted by the provider, I can therefore see how the OIG was unable to determine that all of the requested PCW services were medically necessary.

While I do not doubt petitioner has limitations, they must be identified and verified so that petitioner's condition is clear to the agency and based on the orders of her physician as required under MA rules. I therefore must conclude that the OIG was correct in its modification of the PA request. As in all PAs, the petitioner bears the burden of proving the services she requests are necessary, and that has not been done. Her PCW provider may be able to file an amendment to the PA request correcting the problems and explaining more fully the need for the hours. This seems especially true in light of her major surgery in July. I suggest that the petitioner, her PCW provider, and the medical specialists she sees review her PCW needs and that they provide increased documentation to support a new request for PCW time. This is not intended to diminish the challenges petitioner faces, but rather to explain that the documentation must be there to support the requested services.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

### **CONCLUSIONS OF LAW**

The OIG correctly modified the PCW hours for petitioner pursuant to her PA request.

**THEREFORE, it is**

**ORDERED**

The petition for review herein is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### APPEAL TO COURT

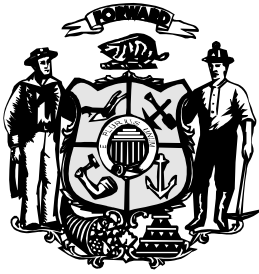
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 25th day of August, 2015

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on August 25, 2015.

Division of Health Care Access and Accountability